88-2048

Supreme Court, U.S.
FILED
MAY 16 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

GARLAND W. FARNSWORTH
and
JOHN L. JOHNSON,

Petitioners,

vs.

CITY OF KANSAS CITY,
MISSOURI, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Garland W. Farnsworth
and
John L. Johnson

1203 East 42nd Street
Kansas City, Missouri 64110
(816) 753-3904

Pro Se Petitioners

May 13, 1989

QUESTIONS PRESENTED FOR REVIEW

(1) Whether, under the facts of this case, a summary dismissal without affording notice and hearing violates procedural due process.

(2) Whether the district court's construction of Local Rule 15 of the Western District of Missouri distorts the purpose of Rule 16 (b), Federal Rules of Civil Procedure, in violation of 28 U.S.C., Section 2071, and Rule 83, Federal Rules of Civil Procedure.

PARTIES TO THE PROCEEDING

Garland W. Farnsworth and John L. Johnson are plaintiffs in the district court and petitioners here. City of Kansas City, Missouri; George L. Sharp; Board of Police Commissioners of Kansas City, Missouri; Lawrence Joiner; James D. Byram; Ulon W. Haynes; Graham L. Cummings; Gary R. Majors; Leslie H. Ramsey; Dean B. Kelly; George L. Burns; James Komoroski; James E. Portwood; Phillip J. Stockard; David Ray; Jerry Fortney; Gregory Watkins; Delois Prymus; Linda C. Walker; Robert Truss, Sr.; Mary Truss; David Truss; Robert Truss, Jr.; Paul Truss; Barbara Fuhr; Pamela Brown; Charles Gallipeau; Walter Davis; Lucinda Blanford and Raymond Blanford are defendants in the district court and respondents here.

TABLE OF CONTENTS

Page

Questions Presented for Review i

Parties to the Proceeding ii

Table of Authorities iii

Opinions Below v

Basis of Jurisdiction 2

Constitutional and Statutory Provisions Involved 3

Statement of the Case 3

1. The Complaint 3

2. Local Rule 15 5

3. Dismissal 9

4. Petitioners' Appeal 12

Reasons for Granting the Writ

I. The refusal of the court of appeals to determine that the sua sponte dismissal of petitioners' complaint without affording notice and hearing conflicts with decisions of this Court 13

Page

II. Under this Court's controlling precedent, the district court's construction of Local Rule 15 of the Western District of Missouri is inconsistent with Rule 16(b), Federal Rules of Civil Procedure and therefore invalid under 28 U.S.C., Sections 2071, and Rule 83, Federal Rules of Civil Procedure 16

Conclusion 20

TABLE OF AUTHORITIES

CASES

	PAGE
Anti-Fascist Committee v. McGrath, 341 U.S. 123 (1951)	15
Armstrong v. Manzo, 380 U.S. 545 (1965)	14
Goss v. Lopez, 419 U.S. 565 (1975)	15
Grannis v. Ordean, 234 U.S. 385 (1914)	14
King v. Fidelity Nat. Bank, 712 F.2d 188 (5th Cir. 1983) . . .	13
Mullane v. Central Hanover Trust Co., 339 U.S. 306 (1950) . . .	14
National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639 (1976) (per curiam)	13
Ordanance Gauge Co. v. Jacquard Knitting Machine Co., 265 F.2d 189 (3rd Cir. 1958) cert. denied, 361 U.S. 829 (1959)	17
Padovani v. Buchhausen, 293 F.2d 546 (1961)	18, 19
Phillips v. Commissioner, 283 U.S. 589 (1931)	14
Sibbach v. Wilson & Co., 312 U.S. 1, 655 (1951)	16, 17

CASES

PAGE

Wolff v. McDonnell, 418 U.S. 539 (1974) 14

STATUTES

28 U.S.C. Section 1254(1) 2

28 U.S.C., Section 1291. 3

28 U.S.C., Section 1331. 2

28 U.S.C., Section 1343. 3

28 U.S.C., Section 2071. 3,16,20

42 U.S.C., Section 1983. 3,4

42 U.S.C., Section 1985. 3,4

42 U.S.C., Section 1986. 3,4

FEDERAL RULES

Rule 16, Fed.R.Civ.P. 3,19

Rule 16(b), Fed.R.Civ.P. 6,16,17 18,19

Rule 16(f), Fed.R.Civ.P. 11

Rule 37(b)(2), Fed.R.Civ.P. . . . 11

Rule 83, Fed.R.Civ.P. 3,16,20

LOCAL RULES, WESTERN DISTRICT OF MISSOURI

PAGE

Local Rule 15 . . . . . 3,5,6,8, 17,18,19,20

Local Rule 15B(1) 6

Local Rule 15E 18

OTHER AUTHORITIES

W. Glaser, Pretrial Discovery and the Adversary Process (1968) . 19-20

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1989

GARLAND W. FARNSWORTH

and

JOHN L. JOHNSON,

Petitioners,

v.

CITY OF KANSAS CITY,

MISSOURI, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Garland Farnsworth and John Johnson petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit entered in this action on December 19, 1988.

Opinions Below

The per curiam opinion of the Court of Appeals is reported at 863 F.2d 33 and appears in Appendix A hereto.

The opinion of the District Court is not reported and appears in Appendix B hereto. The pertinent orders of the District Court are not reported and appear in Appendix C hereto.

Basis of Jurisdiction

The judgment of the Court of Appeals was entered on December 19, 1988. Petition for rehearing and rehearing en banc was filed on January 3, 1989. The orders of the Court of Appeals denying rehearing and rehearing en banc were entered on February 15, 1989, and appear in Appendix A hereto. This Court's jurisdiction is invoked under 28 U.S.C. Section 1254(1).

This is an action for alleged civil rights violations over which the District Court had jurisdiction under 28 U.S.C., Sections 1331

and 1343. The Court of Appeals had jurisdiction under 28 U.S.C., Section 1291.

Constitutional and Statutory Provisions Involved

This case involves 42 U.S.C., Section 1983, 1985 and 1986. The text of these statutes appears in Appendix H hereto. The text of 28 U.S.C., Section 2071, also appears in Appendix H hereto. The text of Rules 16, 37 and 83 of the Federal Rules of Civil Procedure appear in Appendix G hereto. The text of Local Rule 15 of the Western District of Missouri appears in Appendix E hereto. The Due Process Clause of the Fourteenth Amendment to the United States Constitution, Section 1, appears in Appendix H.

Statement of the Case

1. The Complaint

Petitioners are brothers residing together in the inner-city of Kansas City, Missouri. On October 6, 1986, petitioners filed, but did not serve, due to their apprehensions

concerning lack of counsel, their pro se action in the District Court for the Western District of Missouri under 42 U.S.C., Sections 1983, 1985 and 1986. On February 3, 1987, the complaint was amended, to include claims for incidents occurring subsequent to the filing of the original complaint, filed and served on the respondents soon thereafter.

The amended complaint alleges that the Truss and Blanford respondents, along with other neighbors of petitioners, have engaged in an ongoing conspiracy to violate petitioners' civil rights via assaults, harassments and causing their false arrest; essentially by making false 911 emergency telephone calls to the Kansas City, Missouri Police Department. It contends that the consistent and systematic refusal to adequately investigate the false 911 calls by the individual police officer respondents, and the policies or practices or customs of

the police department and the City Prosecutor's Office, allowing for suppression of the taped and written records of the false 911 calls, knowingly protected and supported the neighbors' conspiracy. Further, it contends that respondent Gallipeau, an attorney, acted in furtherance of the conspiracy by suborning perjury in court trials concerning petitioners' false arrests. The amended complaint cites eighteen (18) separate examples occurring between May 1983 and January 1987. The amended complaint seeks from all respondents a total of $7,200,000, exemplary or punitive damages.

2. Local Rule 15

On November 20, 1987, respondents filed a joint motion and memorandum seeking to compel petitioners' compliance with Local Rule 15 of the Western District of Missouri (Appendix D1-6). In their memorandum respondents cited the need for "some guidelines for both the conduct of future discovery and completion of

it," and asserted that petitioners were "capable of complying with Local Rule 15 without the assistance of any licensed counsel" (Appendix D1-6). Petitioners responded to the motion via memorandum on December 3, 1987, arguing that Local Rule 15 of the Western District essentially implemented the provisions of Rule 16(b), Federal Rules of Civil Procedure, which mandated that the scheduling order contemplated by both rules must be entered within 120 days of the filing of the complaint; therefore, since petitioners' amended complaint had been pending for over nine (9) months, respondents' motion was untimely. In addition, petitioners' argued that Local Rule 15B(1) accorded them, and all pro se litigants, an automatic exemption from compliance with the provisions of Local Rule 15, which respondents had shown no just cause to rescind. On December 9, 1987, the district court denied respondents motion (Appendix C1).

However, the court's order denying respondents' motion was returned to the district clerk's office on December 14, 1987, marked "no such address, return to sender" by the Postal Service (Appendix F1). The court's order, dated December 9, 1987, was not remailed to petitioners until December 21, 1987 (Appendix F2).

On December 17, 1987, the court entered a sua sponte order withdrawing and superseding its December 9, 1987 order, which directed the parties to: (1) comply with Local Rule 15, and (2) with respondents taking the lead, to submit a proposed discovery schedule within thirty (30) days. Further, the court warned that petitioners' failure to cooperate with respondents could result in sanctions, dismissal or both (Appendix C2-3).

Thereafter, on January 19, 1988, petitioners moved the court to vacate its December 17, 1987 order, or, in the alternative, to stay its order allowing petition to

the court of appeals. In their motion, petitioners essentially offered the same argument they had offered in their memorandum in opposition to respondents' motion to compel compliance with Local Rule 15.

Oppositely, on January 19, 1987, respondents filed a joint motion to compel petitioners' compliance with the court's December 17, 1987 order, claiming petitioners had failed to cooperate in the preparation of a proposed scheduling order. However, in their motion to vacate, or, in the alternative, to stay the court's December 17, 1987 order, petitioners contended that respondents were attempting to force an agreement to halt all discovery within 120 days, which would not reflect the needs of a complex case. Further, petitioners restated the argument offered in their memorandum in opposition to respondents' motion to compel compliance with Local Rule 15.

On February 12, 1988, the district court

entered an order denying petitioners' motion to vacate or stay its December 17, 1987 order and directed that petitioners were to co-operate with respondents' counsel within fifteen days in the preparation of a proposed schedule for discovery or dismissal of petitioners' lawsuit would result (Appendix C4-5).

3. Dismissal

On April 27, 1988, counsel for the individual police officer respondents wrote the district court as a cover letter for his submission of an unsigned draft proposed scheduling order (Appendix D7-10). The cover letter alleged that at the request of "a number of the defendants" he was submitted the agreed-upon draft proposal for the court's settlement of the issue of the date for joinder of additional parties in the lawsuit prior to filing the alleged agreement with the district court clerk (Appendix D13-23). Counsel's April 27 letter also con-

tained copies of letters dated March 16, 1988 and April 6, 1988, allegedly forwarded to petitioners (Appendix D11-12 and D24-25, respectively). Petitioners deny receiving either of these letters.

On May 2, 1988, the district court rejected, without explanation, the unsigned draft proposal submitted by counsel, and directed that the parties "file" a reproduction of its sua sponte scheduling order by May 13, 1988 (Appendix C6-7).

Subsequently, on May 16, 1988, counsel for the individual police officer respondents filed a reproduction of the court's sua sponte scheduling order bearing signatures of all counsel of record and designations opposite the names of petitioners that their signatures had been refused (Appendix D29-37). Counsel also wrote a letter to the court alleging that petitioner John Johnson had telephonically communicated that neither he nor petitioner Farnsworth were going to

sign the proposed scheduling order (Appendix D26-28). Petitioner Johnson denies making these statements.

On May 16, 1988, pursuant to the court's May 2, 1988 sua sponte proposed scheduling order, petitioners filed a motion to amend their amended complaint, with attached copy of their second amended complaint.

Finally, on May 24, 1988, the district court summarily dismissed petitioners' amended complaint with prejudice (Appendix B1-11). The court, relying solely on the letters written by counsel for the individual police officer respondents, held that petitioners' refusal to sign a reproduction of its sua sponte proposed scheduling order constituted a "willful" failure to comply with its express directives. Accordingly, the court concluded, petitioners' amended complaint "must" be dismissed pursuant to the provisions of Rules 16(f) and 37(b)(2), Federal Rules of Civil Procedure. The text

of these Rules appear in Appendix G hereto.

4. Petitioners' Appeal

Petitioners appealed the district court's dismissal on three grounds: (1) the district court abused its discretion in dismissing the amended complaint because it was based on an erroneous construction of the District Court's Local Rules, and petitioners had substantially complied with the court's order in any event; (2) the district court abused its discretion in mooting petitioners' motion for protective order and its award of attorneys' fees for petitioners' failure to attend depositions; and (3) the district court unduly burdened petitioners' right to fair hearing and placed in doubt its ability to conduct unbiased and impartial future proceedings in the action.

The court of appeals per curiam opinion framed the threshold issue as whether "pro se litigants are excused from complying with court orders or substantive and procedural

law" (Appendix A4). Relying principally on this Court's opinion in National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639 (1976) (per curiam), the court of appeals held that dismissal of petitioners' action "was proper" (Appendix A4). The court of appeals brushed aside petitioners' second point by citing King v. Fidelity Nat. Bank, 712 F.2d 188 (5th Cir. 1983) (per curiam), cert. denied, 465 U.S. 1029 (1984) (Appendix A5).

Finally, the court of appeals dismissed petitioners' allegations of bias and prejudice on the part of the district court judge with the comment "wholly unfounded" (Appendix A6).

Reasons for Granting the Writ

I. The refusal of the court of appeals to determine that the sua sponte dismissal of petitioners' amended complaint without being afforded notice and hearing conflicts with decisions of

this Court.

An unbroken line of decisions by this Court establishes the fundamental principal that notice and hearing be granted before deprivations of liberty or property take effect. The importance of notice and meaningful opportunity to be heard has been recognized in proceedings involving issues less significant than the dismissal of a lawsuit which occurred here. See, e.g., Wolff v. McDonnell, 418 U.S. 539 (1974); Armstrong v. Manzo, 380 U.S. 545 (1965); Mullane v. Central Hanover Trust Co., 339 U.S. 306 (1950); Phillips v. Commissioner, 283 U.S. 589 (1931); Grannis v. Ordean, 234 U.S. 385 (1914).

This Court has held that:

"Fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights.. . . Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an

> assurance of rightness. No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it."

Goss v. Lopez, 419 U.S. 565, at 580 (1975) (quoting Anti-Fascist Committee v. McGrath, 341 U.S. 123, at 170, 171-172 (1951) (Frankfurter, J., concurring)).

In this case, cursory review of the district court's discussion and findings of fact recorded in its dismissal order (Appendix B1-11) illustrates the wisdom of Justice Frankfurter's words, i.e., the district court's findings are patently a "one-sided determination of facts decisive of rights" based solely on the writings of counsel for the individual police officer defendants. Thus, the court of appeals clearly erred in affirming the decision below. This is so even though petitioners did not raise the lack of notice and hearing issue in the

court of appeals. See Sibbach v. Wilson & Co., 312 U.S. 1, 655 (1951) (reversal of contempt conviction ordered despite the fact that claim of error was not made on appeal to the court of appeals).

Accordingly, the Court may wish to summarily reverse with appropriate instructions, after review of the original record below.

II. Under this Court's controlling precedent, the district court's construction of Local Rule 15 of the Western District of Missouri is inconsistent with Rule 16(b), Federal Rules of Civil Procedure and therefore invalid under 28 U.S.C., Section 2071 and Rule 83, Federal Rules of Civil Procedure.

It is well established that where the Federal Rules of Civil Procedure set forth his powers, a district judge must confine himself to powers so granted to him. Societe International v. Rogers, 357 U.S. 197 (1958); Sibbach v. Wilson & Co., 312 U.S. 1, 655

(1951).

Also, where the rule involved is a local rule, strict compliance with its provisions appears to be required. See, Ordanance Gauge Co. v. Jacquard Knitting Machine Co., 265 F.2d 189 (3rd Cir. 1958), cert. denied, 361 U.S. 829 (1959).

The district court here distorted Rule 16(b), Fed.R.Civ.P., in three fundamental ways: first, by extending the time in which to file a proposed scheduling order from the 120 days mandated to over nine (9) months; second, by failing to convene a meaningful scheduling conference on which the mandatory scheduling order seems to rely so heavily on; and third, by ordering that the parties agree and, moreover, file, i.e., sign, the court's sua sponte proposed scheduling order.

Furthermore, the district court's orders distorted the purpose of and were inconsistent with Local Rule 15 of the Western District of Missouri in two fundamental ways:

one, by directing pro se plaintiffs to comply with its provisions without just cause and despite the automatic exemption provided by Local Rule 15B(1) (Appendix E2-3); and two, by directing that the defendants should take responsibility for preparing the proposed scheduling order contrary to the expressed provisions of local Rule 15E (Appendix E4).

At best, adequate investigation and preparation for trial would have been a casualty of the district court's distortions; at worst, they would prevent a trial altogether, as eventually happened. Thus, the dismissal was not the result of petitioners' alleged "failure to cooperate"; the dismissal was bottomed on the court's distortion of the rules.

The Second Circuit, when faced with a case similar to this one, in Padovani v. Buchhausen, 293 F.2d 546 (1961), citing its "overriding responsibility to see that justice is done between litigants", concluded that the pretrial procedure utilized by the

district court was not only unauthorized but was "at odds with the purpose and intent of F.R. 16 (as amended in 1970)." Further, the Second Circuit said:

> "That rules calls for a conference of counsel with the court to prepare for, not to avert, trial, leading to an order which shall recite the 'agreements made by the parties as to any of the matters considered.'"

Id. at 293, F.2d 548.

Rule 16(b), Fed.R.Civ.P., as amended in 1983, does not authorize secret, one-sided correspondence with the court, submission of unsigned, alleged agreements or coerced signatures on the court's sua sponte "proposed scheduling order". Nor does Local Rule 15 authorize these actions. In combination, such actions are synonymous with "pushing"--a shorthand term coined by W. Glaser, "Pretrial Discovery and the Adversary Process", at 117, (1968), to describe an abuse of the discovery

rules in order to harass or burden, or better still, artificially age or cause dismissal of an action.

On their face, the district court's departure from the purpose and intent of the Federal Rules are obvious and marked violations of 28 U.S.C., Section 2071 (Appendix H5) and Rule 83, Fed.R.Civ.P., (Appendix G5) which authorizes each district court to make rules governing its practice "not inconsistent" with the Federal Rules of Civil Procedure. Moreover, the court's invocations and construction of Local Rule 15 did not strictly comply with the "appropriate course of procedure" promulgated by the district court en banc (Appendix E1).

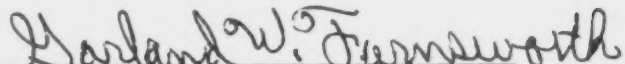
Accordingly, the Court may wish to summarily reverse with appropriate instructions, after review of the original record below.

Conclusion

For the reasons set forth above, a writ of certiori should issue to review the

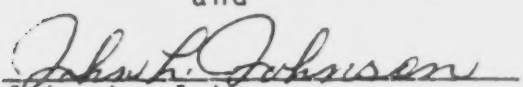
judgment of the Court of Appeals for the Eighth Circuit.

Respectfully submitted,



Garland W. Farnsworth

and



John L. Johnson
Pro Se Petitioners
1203 East 42nd Street
Kansas City, Missouri 64110
(816) 753-3904

May 13, 1989

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 88-1978-WM

Garland W. Farnsworth and John L. Johnson, Appellants, vs. City of Kansas City, MO; George L. Sharp, Prosecutor for the City of Kansas City MO; Board of Police Commissioners of Kansas City, MO; Lawrence Joiner, Chief of Police, Kansas City, MO Police Department; Present or former Police Officers of Kansas City, MO Police Department; James D. Byram; Ulon W. Haynes; Graham L. Cummings; Gary R. Majors; Leslie H. Ramsey; Dean B.	* Appeal from the United States District Court for the Western District of Missouri

Kelly; George L. Burns; James Komoroswi; James E. Portwood; Phillip J. Stockard; David Ray; Jerry Fortney; Gregory Watkins; Delois Prymus; Linda C. Walker; John Doe and Mary Roe, other Police Officers of the City of Kansas City, MO, whose identity is presently unknown; Present or former citizens and residents of the City of Kansas City, MO; Robert Truss, Sr.; Mary Truss; David Truss; Robert Truss, Jr., Paul Truss; Barbara Fuhr; Pamela Brown; Charles Gallipeau; Walter Davis; Lucinda Blandford; Raymond Blandford; Joe Doe and Mary Roe, other citizens *

and residents of the City of Kansas City, MO, whose identity is presently unknown,

Appellees.

Submitted: December 5, 1988

Filed: December 19, 1988

Before McMILLIAN, JOHN R. GIBSON and MAGILL, Circuit Judges.

PER CURIAM.

Garland Farnsworth and John Johnson appeal pro se from the order of the district court[1] sua sponte dismissing with prejudice their civil rights action for failure to comply with the district court's orders to cooperate with appellees in preparing a discovery

---

[1]The Honorable Scott O. Wright, United States District Judge for the Western District of Missouri

schedule. For reversal, appellants argue (1) the district court abused its discretion in dismissing their action with prejudice; (2) the district court erred in mooting appellant's motion for a protective order and awarding attorneys' fees to appellees for appellants' failure to attend scheduled depositions; and (3) the district court's bias against appellants denied them due process. We affirm.

Pro se litigants are not excused from complying with court orders or substantive and procedural law. Burgs v. Sissel, 745 F.2d 526, 528 (8th Cir. 1984) (per curiam). A district court's dismissal as a sanction under Federal Rule of Civil Procedure 37 for failure to comply with a discovery order is reviewed under an abuse of discretion standard. National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639, 642 (1976) (per curiam); Hazen v. Pasley, 768

F.2d 226, 229 (8th Cir. 1985).

After carefully reviewing the record on appeal, we note that the district court gave appellants meaningful notice of what was expected of them during the course of discovery, initially imposed less stringent sanctions when they failed to cooperate, and warned them that their failure to comply with subsequent court orders would result in dismissal of their action. Accordingly, we hold that dismissal was proper. See Ramsey v. Bailey, 531 F.2d 706, 709 (5th Cir. 1976) (per curiam).

We further hold that the district court did not abuse its discretion in awarding to appellees attorneys' fees after appellants failed to attend their properly-noticed depositions. See Fed. R. Civ. P. 37(d); King v. Fidelity Nat. Bank, 712 F.2d 188, 191 (5th Cir. 1983) (per curiam), cert. denied, 465 U.S. 1029 (1984).

Finally, appellants' allegations of district court bias and prejudice are wholly unfounded.

Accordingly, the district court's judgment is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS

EIGHTH CIRCUIT

(TO BE PUBLISHED)

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 88-1978-WM

Garland W. Farnsworth, et al., Appellants, vs. City of Kansas City, MO, et al., Appellees.	* Appeal from the United States District Court for the Western District of Missouri

Appellant's petition for rehearing en banc has been considered by the Court and is denied.

Petition for rehearing by the panel is also denied.

February 15, 1989

Order entered at the Direction of the Court:

Clerk, United States Court of Appeals,
Eighth Circuit

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

GARLAND W. FARNSWORTH, et al, Plaintiffs	)	
v.	)	No. 86-1136-CV-W-5
CITY OF KANSAS CITY, MISSOURI, et al, Defendants	)	

ORDER

On December 17, 1987, this Court entered an order directing pro se plaintiffs Garland W. Farnsworth and John L. Johnson to comply with Local Rule 15 regarding discovery and "to cooperate with defendants in preparing the discovery schedule and in conducting discovery." On May 16, defendants submitted a proposed scheduling order, noting that pro se plaintiffs have refused to sign the proposed scheduling order. Thus, the issue before this Court is whether pro se plaintiffs' failure to comply with this Court's

express directives is grounds for sanctions, in the form of a dismissal of their cause of action. For the following reasons, the Court concludes that this action must be dismissed.

Factual Background

On December 17, 1987, the Court issued an amended order which provided:

> "It is hereby ORDERED that this Court's December 9, 1987 order is withdrawn and superseded as follows:
>
> 1. That plaintiffs and defendants are to comply with Local Rule 15 regarding discovery;
>
> 2. That the parties, with the defendants taking the lead, are to submit their proposed discovery schedule within thirty (30) days from the date of this order;
>
> 3. That plaintiffs are to cooperate with defendants in preparing the discovery schedule and in conducting discovery; and
>
> 4. That plaintiffs' failure to so cooperate could result in sanctions, dismissal or both."

On January 19, 1988, defendants filed a joint motion to compel compliance in which

defendants noted the following:

> "According to the Court's directive, defendants took the lead in attempting to agree on a discovery schedule. See the attached letter of January 11, 1988. On January 12, 1988, plaintiff John Johnson telephoned attorney G. Steven Ruprecht, and informed Mr. Ruprecht that the plaintiffs would not participate in preparation of a draft order for reasons that should be more properly described by the plaintiffs in any response that they might file to this motion. Because of the plaintiffs' advice to the defendants that plaintiffs would not participate in the preparation of a draft order for submission to the Court for review, the undersigned defendants hereby request the Court to enter a further order either compelling the plaintiffs to comply or, in the alternative, granting sanctions, dismissal of the plaintiffs' action against all defendants or both."

On February 1, 1988, pro se plaintiffs filed a pleading captions: Motion to Vacate Court's Order of December 17, 1987 or, in the Alternative, a Stay of Court's Order to Allow Petition to the USCA 8th Circuit Pursuant to 28 U.S.C. Section 1651. In this motion, pro se plaintiffs set forth their reasons for

concluding why Local Rule 15 should not apply.

Pro se plaintiffs' rationale for not having Local Rule 15 apply was rejected by this Court in an order dated February 12, 1988. In this order the Court gave plaintiffs the following admonition:

> "It is further ORDERED that plaintiffs are given an additional fifteen (15) days from the date of this order in which to cooperate with defendants' counsel in the preparation of a proposed discovery schedule, and that the failure of plaintiffs to so cooperate will result in dismissal of plaintiffs' lawsuit."

On April 27, 1988, counsel for some of the defendants in this action, Mr. G. Steven Ruprecht, sent to this Court a draft of a proposed scheduling order along with a letter dated April 17, 1988, wherein counsel noted that the schedule had incorporated all of pro se plaintiffs' comment. However, counsel noted that there was a dispute regarding the joinder of additional parties.

After review of the draft proposed scheduling order, the Court, by order dated May 2, 1988, rejected the draft scheduling order and directed the parties to submit a proposed scheduling order by May 13, 1988, reflecting a close of discovery on September 1, 1988, the joinder of all additional parties by May 16, 1988, and the filing of all dispositive motions by September 1, 1988. In this order, the Court also set this case for trial on the Joint Accelerated Docket commencing on September 26, 1988.

On May 16, 1988, counsel for defendants filed a proposed scheduling order which was signed by counsel for all of the defendants; however, in the spaces set aside for pro se plaintiffs' signature, the counsel noted that plaintiffs refused to sign. On the same day, counsel Ruprecht sent a letter to this Court, dated May 16, 1988, along with a copy of the proposed scheduling order filed with the

Court. In this letter, Ruprecht stated the following:

> "Dear Judge Wright:
>
> In your order of May 2, 1988, you ordered that the parties file a Proposed Scheduling Order by May 13, 1988, reflecting certain dates which you set forth in your order of May 2.
>
> Pursuant to that order, I drafted a Proposed Scheduling Order and sent it to the plaintiffs for signature. One of the plaintiffs, Mr. John Johnson, called me on the telephone and told me that neither he nor his brother, Garland Farnsworth, were going to sign the Proposed Order. Therefore, I had a second copy signed by the other counsel of record and noted that the signatures of plaintiffs were refused. A copy of that proposed order is attached. . . ."

Discussion

The Court begins by noting that Rule 16(f), Federal Rules of Civil Procedure, provides, in relevant part, that:

> "If a party or party's attorney fails to obey a scheduling or pre-trial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference,

or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). . . ."

Rule 37(b)(2) provides that:

"If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the Court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.

> (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party. . . ."

Finally, Local Rule 15F provides that:

> "The failure of a party or a party's counsel to participate in good faith in the framing of the proposed scheduling order contemplated by this rule and Rule 16(b) may result in the imposition of appropriate sanctions."

In this case, the Court finds that pro se plaintiffs have willfully failed to comply with this Court's orders requiring that they work with defense counsel in framing a suitable scheduling order despite repeated admonishments by the Court. Thus, the Court concludes that pro se plaintiffs' willful failures to comply with the Court's directives constitute an attempt by plaintiffs to flout this Court's authority and justifies

dismissal of this action.[1]

The courts have uniformly held that a District Court, in its discretion, may dismiss an action where there is a pattern of willful noncompliance and bad faith on the part of a party during discovery. See e.g. Ganapolsky v. Kelton Corp., 823 F.2d 700, 701 (1st Cir. 1987); Shawnut Boston International Banking Corp. v. Duque-Pena, 767 F.2d 1504, 1507 (11th Cir. 1985); Cross v. General Motors Corp., 721 F.2d 1152, 1155 (8th Cir. 1983), cert. denied, 466 U.S. 980, 104 S.Ct.

---

[1]The Court notes that this is not the first instance where pro se plaintiffs have ignored a directive by this Court and acted to hinder the discovery process. At an April 9, 1987 hearing, the Court entered sanctions in the form of attorneys' fees to defense counsel for pro se plaintiffs' willful failure to attend properly noticed depositions. At that hearing, the Court warned pro se plaintiffs that if they insisted on pursuing this action themselves, without aid of counsel, this Court would not be very tolerant of any further conduct which would hinder or delay the resolution of this action and would otherwise work any hardship on defendants.

2364 (1984); Hindman v. National-Ben Franklin Life Insurance Corp., 677 F.2d 617, 620 (7th Cir. 1982); E.E.O.C. v. Troy State University, 693 F.2d 1353, 1358 (11th Cir. 1982). See also Roberts v. Norden Division, United Aircraft Corp., 76 F.R.D. 75, 81 (E.D.N.Y. 1977) (While a pro se plaintiff must be accorded special consideration due to unique problems faced by one lacking expertise in the law, situation before the court in determining whether to impose sanctions for failure to comply with a discovery order is one involving conduct rather than one requiring knowledge of the law). Since pro se plaintiffs have repeatedly ignored this Court's directives, and in light of the fact that this Court's previous imposition of sanctions in the form of attorney's fees and costs to the opposing parties has not served to induce plaintiffs' compliance, the Court has no choice but to dismiss this case with

prejudice.

Accordingly, it is hereby

ORDERED that this action be dismissed with prejudice.

SCOTT O. WRIGHT
United States District Judge

May 24, 1988

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

GARLAND W. FARNSWORTH, et al, Plaintiffs	)
v.	) No. 86-1136-CV-W-5
CITY OF KANSAS CITY, MISSOURI, et al, Defendants	)

ORDER

It is hereby

ORDERED that defendants' joint motion for an order compelling plaintiff to comply with Local Rule 15 regarding discovery is denied.

SCOTT O. WRIGHT
United States District Judge

December 9, 1987

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

GARLAND W. FARNSWORTH, et al, Plaintiffs	)
v.	) No. 86-1136-CV-W-5
CITY OF KANSAS CITY, MISSOURI, et al, Defendants	)

AMENDED ORDER

It is hereby

ORDERED that this Court's December 9, 1987 order is withdrawn and superseded as follows:

1. That plaintiffs and defendants are to comply with Local Rule 15 regarding discovery;

2. That the parties, with the defendants taking the lead, are to submit their proposed discovery schedule within thirty (30) days from the date of this order.

3. That the plaintiffs are to co-operate with defendants in preparing the discovery schedule and in conducting discovery; and

4. That plaintiffs failure to so co-operate could result in sanctions, dismissal or both.

SCOTT O. WRIGHT
United States District Judge

December 17, 1987

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

GARLAND W. FARNSWORTH, et al, Plaintiffs	)	
v.	)	No. 86-1136-CV-W-5
CITY OF KANSAS CITY, MISSOURI, et al, Defendants	)	

ORDER

It is hereby

ORDERED that plaintiffs' motion to vacate this Court's December 17, 1987 order or, in the alternative, to stay this Court's order pending appeal, is denied. It is further

ORDERED that plaintiffs are given an additional fifteen (15) days from the date of this order in which to cooperate with defendants' counsel in the preparation of a proposed discovery schedule, and that the failure of plaintiffs to so cooperate will

result in dismissal of plaintiffs' lawsuit.

SCOTT O. WRIGHT
United States District Judge

February 12, 1988

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

GARLAND W. FARNSWORTH, et al, Plaintiffs	)
v.	) No. 86-1136-CV-W-5
CITY OF KANSAS CITY, MISSOURI, et al, Defendants	)

ORDER

It is hereby

ORDERED that the proposed scheduling order draft submitted by the parties is rejected and that the parties file a proposed scheduling order reflecting, inter alia, the following by May 13, 1988:

(1) All pretrial discovery shall close on September 1, 1988;

(2) Any additional parties shall be joined by May 16, 1988; and

(3) All dispositive motions shall be filed by September 1, 1988.

It is further

ORDERED that this case be docketed for

trial on the Joint Accelerated Docket commencing on September 26, 1988, at 7:30 a.m. at the United States Courthouse in Kansas City, Missouri. It is further

ORDERED that the parties submit the following by September 16, 1988:

(1) Proposed voir dire questions;

(2) Proposed jury instructions (defendants have until September 22, 1988 to file these);

(3) Witness lists;

(4) Exhibit lists; and

(5) Any other pretrial briefs or motions, if appropriate.

SCOTT O. WRIGHT
UNITED STATES DISTRICT JUDGE

DATED: May 2, 1988

APPENDIX D

D1

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

GARLAND W. FARNSWORTH and JOHN L. JOHNSON, Plaintiffs	)
v.	) No. 86-1136-CV-W-5
THE CITY OF KANSAS CITY, MISSOURI, et al, Defendants	)

JOINT MOTION OF DEFENDANTS FOR ORDER DIRECTING PLAINTIFFS TO COMPLY WITH LOCAL RULE 15

COME NOW the undersigned defendants, by and through their counsel of record, and jointly move the court for an order compelling pro se plaintiffs to comply with Local Rule 15 regarding discovery, all for the reasons more fully set forth in the attached memorandum in support hereof.

William D. Geary, Esq.
Law Department of Kansas City
28th Floor City Hall
414 East 12th Street
Kansas City, Missouri 64106
ATTORNEYS FOR DEFENDANTS
CITY OF KANSAS CITY, MISSOURI
and GEORGE L. SHARP

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

GARLAND W. FARNSWORTH and JOHN L. JOHNSON,	)	
Plaintiffs	)	
v.	)	No. 86-1136-CV-W-5
THE CITY OF KANSAS CITY, MISSOURI, et al,	)	
Defendants	)	

MEMORANDUM IN SUPPORT OF JOINT MOTION OF DEFENDANTS FOR ORDER DIRECTING PLAINTIFFS TO COMPLY WITH LOCAL RULE 15

This case was brought by Mr. Farnsworth and Mr. Johnson, as pro se plaintiffs, and has been pending for almost a year against a large number of defendants.

Discovery has proceeded for approximately eight months, but not without difficulty. The sheer size and weight of the court's file will attest to the pretrial discovery work being accomplished by the parties.

Currently, there is no goal for completion of discovery nor any plan to effect that goal. It appears that the plaintiffs intend to conduct substantial additional discovery. Plaintiffs have orally informed attorney for defendants of that fact and have commented that ". . . we will still be doing this next year."

Although pro se plaintiffs are generally exempted from compliance with Local Rule 15 of this court, the undersigned defendants believe that the current circumstances warrant that some "guidelines" be set down for both the conduct of future discovery and completion of it. At the present time, defendants have no idea exactly what further discovery plaintiffs intend to undertake, nor how and when they intend to accomplish it.

Because of the large number of defendants joined in this lawsuit, the number of attorneys involved, and number of counts

alleged and the myriad of facts and theories pleaded in the complaint, it is critical for all parties to develop a scheme to bring this case before the court for trial in a timely and expeditious manner.

Therefore, the undersigned defendants request this court to enter an order directing the plaintiffs to comply with Local Rule 15. A copy of Local Rule 15 is attached to this memorandum to facilitate plaintiffs' review. Furthermore, the defendants request that a discovery scheduling order be agreed upon by the parties within 30 days from the date of the court's order commanding plaintiffs' compliance with Local Rule 15. It is further requested that the court's order commanding compliance with Local Rule 15 order that discovery be completed within 120 days from the date of the court's order, unless plaintiffs otherwise show to the court

good and sufficient reasons why discovery cannot be completed by that date.

Although the plaintiffs are acting pro se in this case, the court readily can observe by all of their filings made to date and depositions taken by plaintiffs, that plaintiffs are capable of complying with Local Rule 15 without the assistance of any licensed counsel. Given the record to date, there is no good reason known to the defendants which would support further exemption of the plaintiffs from compliance with Local Rule 15. Plaintiffs will remain free to conduct any and all discovery permitted within the rules, but within the confines of a stated plan. Development of such a plan is justified and necessary. No prejudice will result to plaintiffs.

WHEREFORE, the defendants pray the order of the court.

William D. Geary, Esq.
Law Department of Kansas City
28th Floor City Hall
414 East 12th Street
Kansas City, Missouri 64106
ATTORNEYS FOR DEFENDANTS
CITY OF KANSAS CITY, MISSOURI
and GEORGE L. SHARP

Neal E. Millert
JAMES, MILLERT, HOUDEK, et al.
500 Scarritt Building
818 Grand Avenue
Kansas City, Missouri 64106
ATTORNEYS FOR DEFENDANTS
LARRY JOINER, CHIEF OF POLICE and
THE BOARD OF POLICE COMMISSIONERS

G. Steven Ruprecht
MARGOLIN AND KIRWAN
1000 United Missouri Bank Building
928 Grand Avenue
Kansas City, Missouri 64106-2051
ATTORNEYS FOR DEFENDANTS
CITY OF KANSAS CITY, MISSOURI
and GEORGE L. SHARP

D7

Law Offices

MARGOLIN AND KIRWAN

1000 United Missouri Bank Building

928 Grand Avenue

Kansas City, Missouri 64106-2051

(816)842-7080

April 27, 1988

Honorable Scott O. Wright

United States District Court for the

Western District of Missouri

United States Courthouse

811 Grand

Kansas City, Missouri 64106

RE: Garland W. Farnsworth, et al., Plaintiffs v. City of Kansas City, Missouri, et al., Defendants, Case No. 86-1136-CV-W-5

Dear Judge Wright:

There has been some discussion in this case dating back to the latter part of 1987

regarding the preparation and presentation of a scheduling order to the court for future reference by the parties as to completion of pretrial matters. The parties were directed by the court to confer and propose to the court an agreed scheduling order. An order was drafted and circulated to all parties, some of which responded orally and some of which responded in writing.

I attempted to draft a Proposed Scheduling Order in view of the letter responses and oral communications from various parties. That draft order was circulated to plaintiffs and all defense counsel of record by my letter of March 16, 1988, enclosing a Proposed Scheduling Order draft.

It is my understanding that the defendants

are willing to agree to an order in the form attached, which incorporates all of the comments of the plaintiffs. There is only one item in dispute and it pertains to Roman Numeral I, regarding joining additional parties. The defendants proposed the date of April 30, 1988, while the plaintiffs proposed the date of July 29, 1988 and the parties have been unable to resolve that dispute.

Therefore, I have been asked by a number of the defendants to present this proposed order to the court for its review, with a request that the court resolve for the parties the issue of an appropriate date for the joinder of additional parties in this lawsuit.

I would be happy to redraft the final form of the order for the court once a ruling has been made on the joinder issue.

Very truly yours,

GSR:bas

Enclosures (3): GSR 3-16-88 Letter

Proposed Scheduling Order

GSR 4-6-88 Letter

cc: Plaintiffs

All Counsel of Record

D11

Law Offices

MARGOLIN AND KIRWAN

1000 United Missouri Bank Building

928 Grand Avenue

Kansas City, Missouri 64106-2051

(816)842-7080

March 16, 1988

TO: PLAINTIFFS

ALL COUNSEL OF RECORD

UNREPRESENTED DEFENDANTS

RE: Garland W. Farnsworth, et al., Plaintiffs v. City of Kansas City, Missouri, et al., Defendants, Case No. 86-1136-CV-M-5 In the United States District Court for the Western District of Missouri, Western Division Proposed Scheduling Order Draft

To all concerned:

After receiving correspondence from a number of different parties regarding a Proposed Scheduling Order, I have made an attempt to draft a Proposed Order. I call to your attention the only point currently in contention and that is Roman Numeral One on the Order regarding joining additional parties. It is a dispute between the parties as to whether all joinders should occur by April 30 or July 29. Please let me have any comments that anyone has for changing anything in the order.

Very truly yours,

GSR: bas

Enclosure: Proposed Scheduling Order Draft

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

GARLAND W. FARNSWORTH, et al, Plaintiffs	)	
v.	)	No. 86-1136-CV-W-5
CITY OF KANSAS CITY, MISSOURI, et al, Defendants	)	

PROPOSED SCHEDULING ORDER

I

Any motion to join additional parties will be filed on or before _____.

The plaintiffs propose the date of July 29, 1988 to join additional parties for the reason that plaintiffs estimate joining an additional fifteen (15) defendants. Plaintiffs further maintain that defendant Joiner has failed to supply certain requested records needed to identify potential defen-

dants employed by the Kansas City, Missouri Police Department. Defendant Joiner denies this. Furthermore, plaintiffs maintain that other defendants must be discovered by way of subpoenas issued to Southwestern Bell Telephone Company and the Missouri Department of Social Services.

The defendants propose a date for joinder of additional parties of April 30, 1988. This date is proposed by the defendants on the ground that this suit has pending for approximately one and one-half years. Plaintiffs contemplate substantial additional discovery and amendments to the complaint. It is necessary for all parties to be joined before those matters progress. A substantial delay in joining additional parties will further delay completion of discovery, amendment of pleadings and filing of motions. Plaintiffs have had ample time to identify any other defendants which they desire to

join in this litigation.

II

Any motion to amend the pleadings will be filed on or before September 30, 1988.

This date is proposed because plaintiffs contemplate extensive revisions to the complaint and desire to conduct substantial additional discovery before amending the complaint. Plaintiffs believe that the complaint should not be amended until all the additional parties are joined.

III

All other motions will be filed on or before January 31, 1989.

This date is proposed because plaintiffs desire approximately sixty (60) days to prepare such motions after completion of all discovery.

IV

1. All pre-trial discovery authorized by the Federal Rules of Civil Procedure

will be completed on or before November 30, 1988.

2. The following factors were considered by counsel in arriving at the date proposed in Paragraph No. 1 above:

   A. The plaintiffs desire to take the following additional discovery: Interrogatories, Requests for Admission, Requests for Production of Documents, Submission of Written Deposition Questions, and taking of numerous oral depositions.

      Currently, the defendants anticipate no further discovery, except for the completion of any remaining discovery outstanding.

3. The following discovery has been initiated and its current status is as follows:

A. Plaintiffs

(1) Interrogatories to Defendant Joiner (answered)

(2) Requests to Produce No. 1 to Defendant Joiner (responded), No. 2 to defendant Joiner (responded)

(3) Requests to Admit (none)

(4) Oral Depositions

James Overbay, October 15, 1987

Lee Nation, October 15, 1987

Kit Carson Rocque, October 16, 1987

Fred Slough, October 16, 1987

John Hess, October 22, 1987

B. Defendants

(1) Interrogatories (none)

(2) Requests for Production of Documents:

(a) Defendant City of Kansas City, Missouri and George Sharp to

Plaintiffs (responded)

(b) Defendants Board of Police Commissioners and Defendant Joiner to Plaintiffs (responded)

(c) Defendant Blanfords (responded)

(d) Defendants Truss and Fuhr (responded)

(3) Requests for Admissions:

(a) Defendant Blanford to plaintiffs (responded)

(4) Oral Depositions:

(a) Garland Farnsworth, April 13 & 14, 1987

(b) John Johnson, April 15 & 16, 1987

4. On or before the date proposed in Paragraph 1 above, each party intends to initiate and complete the discovery listed below under the name of each party:

A. Plaintiffs

(1) Interrogatories:

(a) To the Board of Police Commissioners

(2) Requests for Admission

(a) To Defendant Lawrence Joiner

(b) To Defendant Board of Police Commissioners

(c) To Defendant City of Kansas City, Missouri

(3) Production of Documents

(a) To each individual police officer defendant

(b) To Defendant Lawrence Joiner (supplemental)

(c) To Defendant Board of Police Commissioners

(4) Discovery Contemplated with Non-Parties

(a) Subpoena to Court Adminis-

trator, Circuit Court of Kansas City, Missouri

(b) Subpoena to Court Administrator, Circuit Court of Jackson County, Missouri

(c) Subpoena to Human Relations Department, City of Kansas City, Missouri

(d) Subpoena to Animal Control Department, City of Kansas City, Missouri

(e) Subpoena to Human Relations Department, City of Kansas City, Missouri

(f) Subpoena to KCTV-Channel 5

(g) Subpoena to United States Postal Service, Kansas City, Missouri

(h) Subpoena to Southwestern Bell Telephone Company, Kansas City, Missouri

(i) Subpoena to Social Services Department, Jackson County, Missouri

(5) Depositions Upon Written Questions:

(a) Plaintiffs intend to submit written deposition questions to each and every defendant in the case who is not orally deposed. At least thirty (30) written depositions will be submitted by plaintiffs.

(6) Oral Depositions

(a) Plaintiffs intend to request that the following parties or persons be deposed:

1. Lawrence Joiner
2. Michael Allan Wee
3. Marilyn S. Parkinson

4. Manford Maier
5. Major Al Lomax
6. James Kobalt
7. Arthur D. Brookfield II
8. Major Richard Fletcher
9. Willie Walton
10. Judge Marcia K. Walsh
11. Judge James M. Reed
12. Judge William M. Ely
13. Dan Sharp
14. Alice E. Beshoner
15. Edward B. Rucker
16. Charles A. Gallipeau
17. Robert Truss, Sr.
18. Patricia Glorioso
19. Ann Rauch

B. Defendants

Defendants do not contemplate the initiation of any further discovery, unless otherwise prompted by additional discovery taken by the plaintiffs. Defendants do

intend to complete any existing discovery which has not been completed to date.

D24

Law Offices

MARGOLIN AND KIRWAN

1000 United Missouri Bank Building

928 Grand Avenue

Kansas City, Missouri 64106-2051

(816)842-7080

April 6, 1988

Mr. Garland Farnsworth

1203 East 42nd Street

Kansas City, Missouri 64110

Mr. John Johnson

1203 East 42nd Street

Kansas City, Missouri 64110

RE: Garland W. Farnsworth, et al., Plaintiffs v. City of Kansas City, Missouri, et al., Defendants, Case No. 86-1136-CV-M-5 In the United States District Court for the Western District of Missouri, Western Division

Dear Mr. Johnson and Mr. Farnsworth:

It has been some period of time since I communicated with you regarding the draft of the Rule 15 order. Mr. Johnson telephoned me after receiving it and made several comments about the draft order. He indicated that he would follow his comments up in writing.

I have delayed forwarding the draft to the court subject to receiving Mr. Johnson's written comments. I ask that you forward those comments to me so that I may file the draft with the court. The reply of all parties is long overdue.

Very truly yours,

GSR:bas

cc: Mr. Michael Wee

Law Offices

MARGOLIN AND KIRWAN

1000 United Missouri Bank Building

928 Grand Avenue

Kansas City, Missouri 64106-2051

(816)842-7080

May 16, 1988

Honorable Scott O. Wright

Chief District Judge

United States District Court

for the Western District of Missouri

United States Courthouse

811 Grand

Kansas City, Missouri 64106

RE: Garland W. Farnsworth, et al., Plaintiffs v. City of Kansas City, Missouri, et al., Defendants, Case No. 86-1136-CV-M-5

Dear Judge Wright:

In your order of May 2, 1988, you

ordered that the parties file a Proposed Scheduling Order by May 13, 1988, reflecting certain dates which you set forth in your order of May 2.

Pursuant to that order, I drafted a Proposed Scheduling Order and sent it to the plaintiffs for signature. One of the plaintiffs, Mr. John Johnson, called me on the telephone and told me that neither he nor his brother, Garland Farnsworth, were going to sign the Proposed Order. Therefore, I had a second copy signed by the other counsel of record and noted that the signatures of plaintiffs were refused. A copy of that Proposed Order is attached. The original, carrying signatures of defense counsel, has been filed on the second floor.

GSR: bas

Enclosure:

cc: Mr. Garland W. Farnsworth

Mr. John Johnson

Mr. William D. Geary

Mr. Neal E. Millert

Mr. Kevin M. McCormick

Ms. Julie E. Levin

Mr. Charles A. Gallipeau

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

GARLAND W. FARNSWORTH, et al,	)	
Plaintiffs	)	
v.	)	No. 86-1136-CV-W-5
CITY OF KANSAS CITY, MISSOURI, et al,	)	
Defendants	)	

PROPOSED SCHEDULING ORDER

I

Any motion to join additional parties will be filed on or before May 16, 1988.

II

Any motion to amend the pleadings will be filed on or before September 1, 1988.

III

All other motions will be filed on or before September 1, 1988.

IV

1. All pre-trial discovery authorized by the Federal Rules of Civil Procedure will be completed on or before September 1, 1988.

2. The following factors were considered by counsel in arriving at the date proposed in Paragraph No. 1 above:

   A. The plaintiffs desire to take the following additional discovery: Interrogatories, Requests for Admission, Requests for Production of Documents, Submission of Written Deposition Questions, and taking of numerous oral depositions.

   Currently, the defendants anticipate no further discovery, except for the completion of any remaining discovery outstanding.

3. The following discovery has been ini-

tiated and its current status is as follows:

A. Plaintiffs

(1) Interrogatories to Defendant Joiner (answered)

(2) Requests to Produce No. 1 to Defendant Joiner (responded), No. 2 to defendant Joiner (responded)

(3) Requests to Admit (none)

(4) Oral Depositions

James Overbay, October 15, 1987

Lee Nation, October 15, 1987

Kit Carson Rocque, October 16, 1987

Fred Slough, October 16, 1987

John Hess, October 22, 1987

Al Lomax, March 29, 1988

Ann Rauch, March 29, 1988

George Sharp, October 20, 1987

Ed Rucker, April 5, 1988

Dan Sharp, April 14, 1988

Alice E. Beshoner, April 14, 1988

B. Defendants

(1) Interrogatories (none)

(2) Requests for Production of Documents:

(a) Defendant City of Kansas City, Missouri and George Sharp to Plaintiffs (responded)

(b) Defendants Board of Police Commissioners and Defendant Joiner to Plaintiffs (responded)

(c) Defendant Blanfords (responded)

(d) Defendants Truss and Fuhr (responded)

(3) Requests for Admissions:

(a) Defendant Blanford to plaintiffs (responded)

(4) Oral Depositions:

(a) Garland Farnsworth, April 13

& 14, 1987

(b) John Johnson, April 15 & 16, 1987

4. On or before the date proposed in Paragraph 1 above, each party intends to initiate and complete the discovery listed below under the name of each party:

A. Plaintiffs

(1) Interrogatories:

(a) To the Board of Police Commissioners

(b) To the City of Kansas City, Missouri

(2) Requests for Admission

(a) To Defendant Lawrence Joiner

(b) To Defendant Board of Police Commissioners

(c) To Defendant City of Kansas City, Missouri

(3) Production of Documents

(a) To each individual police

officer defendant

(b) To Defendant Lawrence Joiner (supplemental)

(c) To Defendant Board of Police Commissioners

(4) Discovery Contemplated with Non-Parties

(a) Subpoena to Court Administrator, Circuit Court of Kansas City, Missouri

(b) Subpoena to Court Administrator, Circuit Court of Jackson County, Missouri

(c) Subpoena to Human Relations Department, City of Kansas City, Missouri

(d) Subpoena to Animal Control Department, City of Kansas City, Missouri

(e) Subpoena to Human Relations Department, City of Kansas

City, Missouri

(f) Subpoena to KCTV-Channel 5

(g) Subpoena to United States Postal Service, Kansas City, Missouri

(h) Subpoena to Southwestern Bell Telephone Company, Kansas City, Missouri

(i) Subpoena to Social Services Department, Jackson County, Missouri

(5) Depositions Upon Written Questions:

(a) Plaintiffs intend to submit written deposition questions to each and every defendant in the case who is not orally deposed. At least thirty (30) written depositions will be submitted by plaintiffs.

(6) Oral Depositions

(a) Plaintiffs intend to request that the following parties or persons be deposed:

1. Lawrence Joiner
2. Michael Allan Wee
3. Marilyn S. Parkinson
4. Manford Maier
5. James Kobalt
6. Arthur D. Brookfield II
7. Major Richard Fletcher
8. Willie Walton
9. Judge Marcia K. Walsh
10. Judge James M. Reed
11. Judge William M. Ely
12. Charles A. Gallipeau
13. Robert Truss, Sr.
14. Patricia Glorioso

B. Defendants

Defendants do not contemplate the

initiation of any further discovery, unless otherwise prompted by additional discovery taken by the plaintiffs. Defendants do intend to complete any existing discovery which has not been completed to date.

APPENDIX E

GENERAL RULES OF PRACTICE
of the
United States District Court
for the
Western District of Missouri

The following rules are promulgated for the purpose of assisting counsel by announcing an appropriate course of procedure on procedural matters peculiar to our local practice and not covered by the general rules of civil procedure.

LOCAL RULE 15

CIVIL CASES-SCHEDULING ORDER-DISCOVERY

A. General Principles. Unless otherwise ordered, this Local Rule is applicable to all civil cases pending in this district, except for the cases exempted by Local Rule 15B. Counsel are responsible for completing pretrial discovery in the shortest time reasonably possible with the least expense and without the necessity of judicial intervention.

Rule 16(b), Federal Rules of Civil Procedure, requires that a scheduling order shall be entered in every case, except those specifically exempted, limiting the time (1) to join other parties and to amend the pleadings; (2) to file and hear motions; and (3) to complete discovery. A scheduling order must be entered within 120 days after filing of the complaint unless service is accomplished at a time which makes entry of a scheduling order within 120 days unrealistic. Counsel should have the initial responsibility for suggesting reasonable dates for the scheduling order.

Upon completion of discovery, post discovery pretrial procedures will be scheduled (Local Rule 17) and the case will be set for trial on the next joint civil jury trial docket (Local Rule 18) or will be given a special trial setting. Post discovery pretrial procedures and the trial setting will be coordinated when ever possible.

B. Actions Execmpt From These Procedures. The following categories of actions are exempted from compliance with these procedures unless otherwise directed by the Court:-

CIVIL CASES-SCHEDULING ORDER-DISCOVERY

1. Any action commenced by a plaintiff without an attorney unless an attorney enters an appearance for plaintiff within 120 days after the complaint is filed.

2. Any action filed by or on behalf of a convicted prisoner, a pretrial detainee, or any other person confied in a municipal, state, or federal institution challenging the validity or the conditions of confinement.

3. Any action challenging the validity of a criminal conviction or sentence;

4. Any action coming to this Court on the record from another court or an administrative agency, e.g., bankruptcy and social security appeals.

C. Discovery Shall Commence Immediately. Discovery should commence at the earliest time permitted by the Federal Rules of Civil Procedure. Counsel who fail to invetigate their cases and who fail to commence discovery at the earliest possible time may have difficulty in articipating intelligently in fashioning the scheduling order required by Rule 16(b), Federal Rules of Civil Procedure.

D. Filing of Motions Does Not Automatically Stay Discovery. Absent an order of the Court to the contrary, the filing of a motion, including a discovery motion, a motion for summary judgment, or a motion to dismiss, does not excuse counsel from complying with this rule and any scheduling order entered in the case.

CIVIL CASES-SCHEDULING ORDER-DISCOVERY

E. Plaintiff's Counsel Shall Take Lead in Preparation of Proposed Scheduling Order. After consultation with all counsel, counsel for plaintiff is responsible for preparing a draft of the proposed scheduling order contemplated by this rule. The draft prepared by plaintiff's counsel shall be presented to counsel for all other parties for additions and modifications. Counsel should fully and openly communicate with each other so that a joint proposed scheduling order is submitted. If all counsel do not agree on a proposed scheduling order, separate proposed scheduling orders should not be filed. Disagreements concerning a proposed scheduling order, if unresolved by the good faith efforts of counsel, should be stated in the proposed scheduling order.

F. Sanctions for Failing to Cooperate in Preparing a Proposed Scheduling Order. The failure of a party or a party's counsel to participate in good faith in the framing of the proposed scheduling order contemplated by this rule and Rule 16(b) may result in the imposition of appropriate sanctions. See Rules 16(f) and 37(g) Federal Rules of Civil Procedure.

G. Content of the Proposed Scheduling Order. Within 100 days after the complaint is filed, the parties shall file a proposed scheduling order which shall:

1. Propose a date limiting joinder of parties;

2. Propose a date limiting the filing of motions to amend the pleadings (It is suggested that counsel consider in most cases a date approximately 180

days after the filing of the complaint.);

3. Propose a date limiting the filing and hearing of motions (It is suggested that counsel in most cases consider proposing that (a) all discovery motions be filed on or before the date proposed for the completion of discovery; and (b) subject to the provisions of Rule 12(h)(2), Federal Rules of Civil Procedure, all dispositive motions be filed within 30 days after the date proposed for the completion of discovery.);

4. Propose a plan for the completion of all pretrial discovery, including the date by which all pretrial discovery shall be completed. (Counsel should not propose a date for the completion of discovery which is known to be without any reasonable basis.) See Rules 15H and I.

H. Plan for Completion of Discovery. The proposed plan for completing all discovery authorized by the Federal Rules of Civil Procedure shall include (1) the date by which all discovery will be completed, (2) the facts, such as the complexity of the issues, which counsel considered in arriving at the proposed deadline for the completion of all discovery; (3) the status of all pretrial discovery initiated to date; and (4) a description of all pretrial discovery each party intends to initiate prior to the close of discovery. The information furnished pursuant to (2), (3), and (4) should be sufficiently detailed to inform the Court why the period of time proposed for completing discovery is believed necessary. The

specificity of the information furnished pursuant to (2) and (4) must increase in direct relation to the extent to which the deadline for completion of discovery exceeds 180 days after the complaint is filed. In other words, the longer the time proposed for discovery, the greater detail counsel must furnish in support of the request. Consideration should be given to proposing dates prior to the close of all discovery for the completion of specific phases of discovery. Counsel should keep in mind the general principles governing discovery set forth in the Federal Rules of Civil Procedure and Local Rule 15A. (See Form A, Section IV.)

I. Preliminary Plan for Completion of Discovery. The Court recognizes that in some cases it may be implssible for the parties to prepare a realistic plan for the completion of discovery within 100 days after the complaint is filed. If the parties believe that it is impossible to propose a date for completion of discovery which has a reasonable basis, the parties should consider proposing a preliminary plan for the completion of discovery which will conform to Local Rule 15H rather than proposing a date for completion of all discovery, <u>except</u> a date should be proposed by which a plan will be filed fully complying with Local Rule 15H. <u>Counsel proposing a preliminary plan must explain in detail why a deadline for completion of all discovery cannot be proposed. Only in extraordinary situations and upon a showing of good cause will a preliminary plan be approved</u>.

J. Discovery Conference. If requested prior to or at the time a proposed scheduling order is filed, or if ordered by the Court on its own motion after reviewing a proposed

scheduling order, a discovery conference pursuant to Rule 26(f), Federal Rules of Civil Procedure, will be held before entering a scheduling order.

K. Interrogatories. No party shall serve on any other party more than twenty (20) interrogatories in the aggregate without leave of Court or consent of opposing counsel. Subparagraphs of any interrogatory shall relate directly to the subject matter of the interrogabory and shall not exceed two in number. After compliance with Local Rule 15M, any party desiring to serve additional interrogatories shall file a written motion setting forth the proposed additional interrogatories and the reasons establishing good cause for the additional interrogatories. Any number of additional interrogatories may be filed and served if attached thereto is the written consent of counsel for the party to which the interrogatories are directed.

L. The Form of Answers and Responses to Certain Discovery Requests. The party answering interrogatories, or responding to requests to admit, produce, or inspect shall set forth each question or request immediately before the answer or response.

M. Discovery Motions. Unless otherwise ordered, the Court will not entertain any discovery motion unless counsel for the moving party has conferred, or has made reasonable effort to confer, with opposing counsel concerning the matter prior to the filing of the motion. Counsel for the moving party shall certify compliance with this rule in any discovery motion. See Crown Center Redevelopment Corp. v. Westinghouse Electric, 82 F.R.D. 108 (W.D.Mo 1979).

CIVIL CASES-SCHEDULING ORDER-DISCOVERY

N. Extension of Deadlines Fixed in Scheduling Order. A deadline established by a scheduling order will be extended only upon a good cause finding by the Court. In the absence of disabling circumstances, the deadline for completion of all discovery will not be extended unless there has been active discovery. Delayed discovery will not justify an extension of discovery deadlines. A motion to extend any deadline in a scheduling order must demonstrate a specific need for the requested extension, and should be accompanied by a detailed proposed amendment to the previously entered scheduling order. The date for completion of discovery will be extended only if the remaining discovery is specifically described and scheduled, e.g. the names of each remaining deponent and the date, time and place of each remaining deposition.

Adopted July 20, 1982, eff. Jan. 1, 1983; amended Jan. 12, 1984, eff. Jan. 16, 1984.

FORM A

(CAPTION)

PROPOSED SCHEDULING ORDER

Directions

Before commencing work on a proposed scheduling order, counsel are urged to read Rule 16(b), Federal Rules of Civil Procedure, and Local Rule 15.

Counsel for each party should participate in good faith in attempting to reach an agreed upon proposed scheduling order.

If agreement is impossible, separate proposed scheduling orders should not be filed. Any disputes concerning a proposed scheduling order must be set forth in the proposed scheduling order.

I.

Any motion to join additional parties will be filed on or before _____. This date is proposed because (state reasons why this date is appropriate for this case):

"FORM A"

II.

Any motion to amend the pleadings will be filed on or before _____.
This date is proposed because (state reasons why this date is appropriate for this case):

III.

All other motions will be filed on or before _____. (It may be advisable to propose different dates for different types of motions. See Local Rule 15G(3).
This date (dates) is (are) proposed because (state reasons why this date (these dates) is (are) appropriate for this case.

IV.

(READ LOCAL RULES 15H AND 15I BEFORE COMPLETING)

1. All pretrial discovery authorized by the Federal Rules of Civil Procedure will be completed on or before ____.

"FORM A"

2. The following facts were considered by counsel in arriving at the date proposed in paragraph 1 above:

3. The following discovery has already been initiated and its current status is:

4. On or before the date proposed in paragraph 1 above, each party intends to initiate and complete the discovery listed below the name of each party. (Note: It is not sufficient to state only "depositions" without stating who a party plans to depose. Additional

"FORM A"

depositions may be scheduled before the close of discovery if new witnesses are disclosed.)

_____	_____
_____	_____
_____	_____
Attorney(s) for Plaintiffs	Attorney(s) for Defendants

APPENDIX F

Final entry appearing on page 13 of the District Court Clerk's "Civil Docket Continuation Sheet" reads as follows:

DATE	NR	PROCEEDINGS
12/14/87	RETURN	- of order dated 12/9/87 undelivered to Garland Farnsworth & John Johnson, 1203 E. 42nd St., KCMO 64110, marked "no such number; return to sender"-sent by reg. mail.

Second entry appearing on page 14 of the District Court Clerk's "Civil Docket Continuation Sheet" reads as follows:

DATE	NR	PROCEEDINGS
12/21/87	MEMORANDUM	that doc. #155, order dated 12/9/87, was remailed to pro se plts, along w/copy of front envelope, which was returned here by Post Office on 12/14/87 un-delivered.

APPENDIX G

RULES OF CIVIL PROCEDURE

Rule 16. Pretrial Conferences; Scheduling; Management

(a) PRETRIAL CONFERENCES; OBJECTIVES. In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as

(1) expediting the disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation, and;

(5) facilitating the settlement of the case.

(b) SCHEDULING AND PLANNING. Except in categories of actions exempted by district court rule as inappropriate, the judge, or a magistrate when authorized by district court rule, shall, after consulting with the attorneys for the parties and any unrepresented parties, by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time

(1) to join other parties and to amend the pleadings;

(2) to file and hear motions; and

(3) to complete discovery.

The scheduling order may include

(4) the date or dates for conferences before trial, a final pretrial conference, and trial; and

(5) any other matters appropriate in the circumstances of the case.

The order shall issue as soon as practicable but in no event more than 120 days after

filing of the complaint. A schedule shall not be modified except by leave of the judge or a magistrate when authorized by district court rule upon a showing of good cause.

(c) SUBJECTS TO BE DISCUSSED AT PRETRIAL CONFERENCES. The participants at any conference under this rule may consider and take action with respect to

(1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;
(2) the necessity or desirability of amendments to the pleadings;
(3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence.
(4) the avoidance of unnecessary proof and cumulative evidence;
(5) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;
(6) the advisability of referring matters to a magistrate or master;
(7) the possibility of settlement or the use of extrajudicial procedures to resolve the dispute;
(8) the form and substance of the pretrial order;
(9) the disposition of pending motions;
(10) The need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and
(11) such other matters as may aid in the disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.

(d) FINAL PRETRIAL CONFERENCE. Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

(e) PRETRIAL ORDERS. After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

(f) SANCTIONS. If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or his own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing him or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that

the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

(As amended Apr. 28, 1983,eff. Aug. 1, 1983.)

Rule 37. Failure to Make or Cooperate in Discovery: Sanctions. . . .

(b) FAILURE TO COMPLY WITH ORDER

(2) Sanctions by Court in Which An Action is Pending. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the Court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.

(C) An order striking out pleadings or parts thereof, or

staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party. . . ."

Rule 83. Rules by District Courts

Each district court by action of a majority of the judges thereof may from time to time, after giving appropriate public notice and an opportunity to comment, make and amend rules governing its practice not inconsistent with these rules. A local rule so adopted shall take effect upon the date specified by the district court and shall remain in effect unless amended by the district court or abrogated by the judicial council of the circuit in which the district is located. Copies of rules and amendments so made by any district court shall upon their promulgation be furnished to the judicial council and the Administrative Office of the United States Courts and be made available to the public. In all cases not provided for by rule, the district judges and magistrates may regulate their practice in any manner not inconsistent with these rules or those of the district in which they act.

(As amended Apr. 29, 1985,eff. Aug. 1, 1985).

APPENDIX H

Section 1983. Civil action for deprivation of rights

Every person who, under color of any statue, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively too the District of Columbia shall be considered to be a statute of the District of Columbia.

Section 1985. Conspiracy to interfere with civil rights

Preventing officer from performing duties

(1) If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

Obstructing justice; intimidating party witness, or juror

(2) If two or more persons in any State or Territory conspire to deter, by force, intimidating, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such a juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory

the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, of one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in her person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

Section 1986. Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such

action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

Due Process Clause of the Fourteenth Amendment to the United States Constitution Section 1, which reads in pertinent part as follows:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

---

28 &.S.C. Section 2071, as amended in 1948, eff. 1949 reads as follows:

The Supreme Court and all courts established by act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed by the Supreme Court.